

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1104

**Introduced by Assembly Member Rodriguez
(Principal coauthor: Assembly Member Irwin)**

February 27, 2015

An act to amend Section 1524 of the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL’S DIGEST

AB 1104, as amended, Rodriguez. Search warrants.

Existing law provides that a search warrant may only be issued upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. Existing law also states the grounds upon which a search warrant may be issued, including, among other grounds, when the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony, or when there is a warrant to arrest a person.

Existing law authorizes the seizure of a controlled substance and any device, contrivance, instrument, or paraphanelia used for unlawfully using or administering a controlled substance.

This bill would authorize the issuance of a search warrant ~~on the grounds that the property or things to be seized consist of an item or constitute evidence that tends to show a violation of specified crimes, including shoplifting, fraud, petty theft, receipt of stolen goods, and possession of a controlled substance, or tends to show that a particular person has committed one of those crimes.~~ *when the property or things*

to be seized are controlled substances or any device, contrivance, instrument, or paraphanelia used for unlawfully using or administering a controlled substance.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1524 of the Penal Code, as amended by
2 Section 1 of Chapter 872 of the Statutes of 2014, is amended to
3 read:
4 1524. (a) A search warrant may be issued upon any of the
5 following grounds:
6 (1) When the property was stolen or embezzled.
7 (2) When the property or things were used as the means of
8 committing a felony.
9 (3) When the property or things are in the possession of any
10 person with the intent to use them as a means of committing a
11 public offense, or in the possession of another to whom he or she
12 may have delivered them for the purpose of concealing them or
13 preventing them from being discovered.
14 (4) When the property or things to be seized consist of ~~any~~ *an*
15 item or constitute ~~any~~ evidence that tends to show a felony has
16 been committed, or tends to show that a particular person has
17 committed a felony.
18 (5) When the property or things to be seized consist of evidence
19 that tends to show that sexual exploitation of a child, in violation
20 of Section 311.3, or possession of matter depicting sexual conduct
21 of a person under 18 years of age, in violation of Section 311.11,
22 has occurred or is occurring.
23 (6) When there is a warrant to arrest a person.
24 (7) When a provider of electronic communication service or
25 remote computing service has records or evidence, as specified in
26 Section 1524.3, showing that property was stolen or embezzled
27 constituting a misdemeanor, or that property or things are in the
28 possession of any person with the intent to use them as a means
29 of committing a misdemeanor public offense, or in the possession
30 of another to whom he or she may have delivered them for the
31 purpose of concealing them or preventing their discovery.

1 (8) When the property or things to be seized include an item or
2 ~~any~~ evidence that tends to show a violation of Section 3700.5 of
3 the Labor Code, or tends to show that a particular person has
4 violated Section 3700.5 of the Labor Code.

5 (9) When the property or things to be seized include a firearm
6 or ~~any~~ other deadly weapon at the scene of, or at the premises
7 occupied or under the control of the person arrested in connection
8 with, a domestic violence incident involving a threat to human life
9 or a physical assault as provided in Section 18250. This section
10 does not affect warrantless seizures otherwise authorized by Section
11 18250.

12 (10) When the property or things to be seized include a firearm
13 or ~~any~~ other deadly weapon that is owned by, or in the possession
14 of, or in the custody or control of, a person described in subdivision
15 (a) of Section 8102 of the Welfare and Institutions Code.

16 (11) When the property or things to be seized include a firearm
17 that is owned by, or in the possession of, or in the custody or
18 control of, a person who is subject to the prohibitions regarding
19 firearms pursuant to Section 6389 of the Family Code, if a
20 prohibited firearm is possessed, owned, in the custody of, or
21 controlled by a person against whom a protective order has been
22 issued pursuant to Section 6218 of the Family Code, the person
23 has been lawfully served with that order, and the person has failed
24 to relinquish the firearm as required by law.

25 (12) When the information to be received from the use of a
26 tracking device constitutes evidence that tends to show that either
27 a felony, a misdemeanor violation of the Fish and Game Code, or
28 a misdemeanor violation of the Public Resources Code has been
29 committed or is being committed, tends to show that a particular
30 person has committed a felony, a misdemeanor violation of the
31 Fish and Game Code, or a misdemeanor violation of the Public
32 Resources Code, or is committing a felony, a misdemeanor
33 violation of the Fish and Game Code, or a misdemeanor violation
34 of the Public Resources Code, or will assist in locating an
35 individual who has committed or is committing a felony, a
36 misdemeanor violation of the Fish and Game Code, or a
37 misdemeanor violation of the Public Resources Code. A tracking
38 device search warrant issued pursuant to this paragraph shall be
39 executed in a manner meeting the requirements specified in
40 subdivision (b) of Section 1534.

(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

~~(15) When the property or things to be seized consist of an item or constitute evidence that tends to show a violation of any of the following, or tends to show that a particular person has committed any of the following:~~

~~(A) Shoplifting, as provided in Section 459.5.~~

~~(B) Forgery, as provided in Section 473 or 476a.~~

~~(C) Petty theft, as provided in Section 490.2.~~

~~(D) Offenses related to stolen property, as provided in Section 496.~~

~~(E) Possession of a controlled substance, as provided in Section 11350, 11357, or 11377 of the Health and Safety Code.~~

(15) When the property or things to be seized are controlled substances or any device, contrivance, instrument, or paraphanelia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) (A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

(B) At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case, the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the

1 warrant is unable to locate the person, the special master shall seal
2 and return to the court, for determination by the court, any item
3 that appears to be privileged as provided by law.

4 (d) (1) As used in this section, a “special master” is an attorney
5 who is a member in good standing of the California State Bar and
6 who has been selected from a list of qualified attorneys that is
7 maintained by the State Bar particularly for the purposes of
8 conducting the searches described in this section. These attorneys
9 shall serve without compensation. A special master shall be
10 considered a public employee, and the governmental entity that
11 caused the search warrant to be issued shall be considered the
12 employer of the special master and the applicable public entity,
13 for purposes of Division 3.6 (commencing with Section 810) of
14 Title 1 of the Government Code, relating to claims and actions
15 against public entities and public employees. In selecting the
16 special master, the court shall make every reasonable effort to
17 ensure that the person selected has no relationship with any of the
18 parties involved in the pending matter. ~~Any information~~
19 *Information* obtained by the special master shall be confidential
20 and may not be divulged except in direct response to inquiry by
21 the court.

22 (2) In any case in which the magistrate determines that, after
23 reasonable efforts have been made to obtain a special master, a
24 special master is not available and would not be available within
25 a reasonable period of time, the magistrate may direct the party
26 seeking the order to conduct the search in the manner described
27 in this section in lieu of the special master.

28 (e) Any search conducted pursuant to this section by a special
29 master may be conducted in a manner that permits the party serving
30 the warrant or his or her designee to accompany the special master
31 as he or she conducts his or her search. However, that party or his
32 or her designee may not participate in the search nor shall he or
33 she examine any of the items being searched by the special master
34 except upon agreement of the party upon whom the warrant has
35 been served.

36 (f) As used in this section, “documentary evidence” includes,
37 but is not limited to, writings, documents, blueprints, drawings,
38 photographs, computer printouts, microfilms, X-rays, files,
39 diagrams, ledgers, books, tapes, audio and video recordings, films,
40 and papers of any type or description.

1 (g) No warrant shall issue for any item or items described in
2 Section 1070 of the Evidence Code.

3 (h) Notwithstanding any other law, no claim of attorney work
4 product as described in Chapter 4 (commencing with Section
5 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall
6 be sustained where there is probable cause to believe that the
7 lawyer is engaging or has engaged in criminal activity related to
8 the documentary evidence for which a warrant is requested unless
9 it is established at the hearing with respect to the documentary
10 evidence seized under the warrant that the services of the lawyer
11 were not sought or obtained to enable or aid anyone to commit or
12 plan to commit a crime or a fraud.

13 (i) Nothing in this section is intended to limit an attorney's
14 ability to request an ~~in-camera~~ *in-camera* hearing pursuant to the
15 holding of the Supreme Court of California in *People v. Superior*
16 *Court (Laff)* (2001) 25 Cal.4th 703.

17 (j) In addition to any other circumstance permitting a magistrate
18 to issue a warrant for a person or property in another county, when
19 the property or things to be seized consist of any item or constitute
20 ~~any~~ evidence that tends to show a violation of Section 530.5, the
21 magistrate may issue a warrant to search a person or property
22 located in another county if the person whose identifying
23 information was taken or used resides in the same county as the
24 issuing court.

25 (k) This section shall not be construed to create a cause of action
26 against any foreign or California corporation, its officers,
27 employees, agents, or other specified persons for providing location
28 information.